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**Red Bank Local, American Postal Workers Union,  
AFL-CIO and Michelle Faiman. Case 22-CB-  
9921**

May 27, 2005

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by Michelle Faiman on August 20, 2004, the General Counsel issued the complaint on November 30, 2004, against Red Bank Local, American Postal Workers Union, AFL-CIO, the Respondent, alleging that it has violated Section 8(b)(1)(A) of the Act. The Respondent failed to file an answer.

On January 18, 2005, the General Counsel filed a Motion for Default Judgment and memorandum in support with the Board. On January 24, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a timely response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by December 14, 2004, all the allegations in the complaint could be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated December 20, 2004, notified the Respondent that unless an answer was received by December 27, 2004, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The United States Postal Service (the Employer) provides postal services for the United States and operates various facilities throughout the United States in the per-

formance of that function, including its facility in Eatontown, New Jersey, the only facility involved herein.

The Board has jurisdiction over the Employer and this matter by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. Sec. 101 et seq. (the PRA).

The Respondent is now, and has been at all material times, a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, by virtue of Section 9(a) of the Act, the Respondent has been the exclusive collective-bargaining representative of the following employees of the Employer (the unit):

All maintenance employees, motor vehicle employees, postal clerks, special delivery messengers, mail equipment shops employees and material and distribution centers employees excluding managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards, all postal inspection service employees, employees in supplemental work force as defined in Article 7, rural letter carriers and mailhandlers of letter carriers.

At all material times, the Respondent and the Employer have maintained and enforced a collective-bargaining agreement covering conditions of the employment of the unit and containing, among other provisions, a grievance and arbitration procedure.

Since about May 27, 2004, the Respondent has failed and refused to include the Charging Party, Michelle Faiman, among unit employees who were to share in the distribution of a lump sum payment made by the Employer to employees identified by the Respondent, which resulted from the settlement of a class action grievance concerning displacement of certain Tour 3 postal clerks.

The Respondent engaged in the conduct described above because Faiman was not a member of the Respondent.

**CONCLUSION OF LAW**

By the acts and conduct described above, the Respondent has failed to represent the Charging Party for reasons that are unfair, arbitrary, and invidious, and has breached the fiduciary duty it owes to the Charging Party and the unit. The Respondent has thereby restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, in violation of Section 8(b)(1)(A) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has discriminatorily failed to include Michelle Faiman among the employees who were to share in the distribution of a lump sum payment made by the Employer to employees in the settlement of a class action grievance, we shall order the Respondent to make Michelle Faiman whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

## ORDER

The National Labor Relations Board orders that the Respondent, Red Bank Local, American Postal Workers Union, AFL-CIO, Eatontown, New Jersey, its officers, agents, and representatives, shall

## 1. Cease and desist from

(a) Failing and refusing to include employees who are not members of the Respondent among unit employees who share in the distribution of a lump sum payment made by the U.S. Postal Service to employees identified by the Respondent, in settlement of a class action grievance.

(b) In any like or related manner restraining or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Michelle Faiman whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct in excluding her from the employees who were entitled to share in the lump sum payment made by the U.S. Postal Service to employees in settlement of a class action grievance concerning displacement of certain Tour 3 postal clerks, with interest, in the manner set forth in the remedy section of this decision.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all records in the possession of the Respondent, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its business office and meeting places copies of the at-

tached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Sign and return to the Regional Director sufficient copies of the notice for posting by the U.S. Postal Service, if willing, at all places where notices to employees are customarily posted in its facility in Eatontown, New Jersey.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 27, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX  
NOTICE TO EMPLOYEES AND MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to include employees who are not our members among unit employees who share in the distribution of a lump sum payment made by the U.S. Postal Service to employees identified by us, in settlement of a class action grievance.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Michelle Faiman whole for any loss of earnings and other benefits suffered as a result of our unlawful conduct in excluding her from the employees who were entitled to share in the lump sum payment made by the U.S. Postal Service to employees in settlement of a class action grievance concerning displacement of certain Tour 3 postal clerks, with interest.

RED BANK LOCAL, AMERICAN POSTAL  
WORKERS UNION, AFL-CIO